**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**CRIMINAL REVISION APPLICATION No.213 of 2003**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE BANKIM N.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment? Yes

2 To be referred to the Reporter or not? No

3 Whether Their Lordships wish to see the fair copy of the judgment? No

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No

5 Whether it is to be circulated to the Civil Judge? No

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**IBRAHIM SUMAR RAYSHI - Petitioner**
**Versus**
**SULEMAN SALE RAYSHI & ANR. - Respondents**

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**Appearance :**
MR AJMAL G SOLANKI for Petitioner.
NOTICE SERVED for Respondent No.1.
MR KC SHAH, APP for Respondent No.2.

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**CORAM : HONOURABLE MR.JUSTICE BANKIM N. MEHTA**

**Date : 06/12/2007**

**ORAL JUDGMENT**

The petitioner has filed this Revision Application under Section 397 read with Section 401 of

the Code of Criminal Procedure, 1973 (“the Code” for short) and challenged the judgment and order dated 10th April 2003 passed by the learned Additional Sessions Judge, Gandhidham-Kutch, in Criminal Revision Application No.7 of 2003.

2. The petitioner was married to one Jenabai Suleman Rayshi, daughter of respondent No.1, but the petitioner allegedly did not allow his wife Jenabai to go to her parental house and did not allow her to meet her family members. Therefore, respondent No.1 filed an application under Section 97 of the Code for issuance of search warrant in the Court of learned Judicial Magistrate First Class, Gandhidham-Kutch. The learned Magistrate by his order dated 4th February 2003 dismissed the application.

2.1 Being aggrieved by the decision, respondent No.1 preferred Criminal Revision Application No.7 of 2003 before Sessions Court, Gandhidham. The learned Additional Sessions Judge, Gandhidham-Kutch, by his order dated 10th April 2003, allowed the Revision Application and set aside the order passed by the learned Magistrate. The Revisional Court directed to issue search warrant and to call Jenabai and to proceed with the case after hearing her.

2.2 Being aggrieved by the said decision, the petitioner, son-in-law of respondent No.1 and husband of Jenabai, has preferred present Revision Application.

3. It appears from the order-sheet that this Court

[Coram: Sharad D. Dave, J.] by order dated 3rd May 2003 issued notice for admission, but this Court [Coram: D.P.Buch, J.] on 1st September 2003 passed the following order:

> *"Board shows that the contesting respondent is not served. Issue fresh notice of Rule returnable on 24/9/2003."*

Thus, it appears that the Court has issued Rule.

4. Mr.Solanki, learned advocate for the petitioner, was called out thrice in the first sitting today. However, he has not appeared. In the interest of justice, the matter was kept in the second sitting, but the learned advocate Mr.Solanki has not appeared even in the second sitting. In view of this, oral submissions are not made on behalf of the petitioner.

I have heard Mr.K.C.Shah, learned Additional Public Prosecutor for the respondent No.2-State. The Board indicates that the notice is served upon the respondent No.1 but none has appeared.

5. It appears from the contentions raised in the memo of Revision Application that earlier an application being Criminal Misc. Application No.458 of 2002 was filed by Smt.Hasinabai Suleman Rayshi against (1) Abdeman Sumar Rayshi; (2) Jamin Sumar Rayshi; and, (3) Maluk Sumar, under Section 97 of the Code for issuance of search warrant in respect of Jenabai. The said application came to be rejected by the learned J.M.F.C., Gandhidham-Kutch

on 3rd December 2002. Thereafter, present respondent No.1 filed Criminal Misc. Application No.505 of 2002 against present petitioner and one Jamin Suma Rayshi under Section 97 of the Code for issue of search warrant in respect of Jenabai, but it came to be rejected on 4th February 2003 by the learned Magistrate, Gandhidham-Kutch. This indicates that on dismissal of the application for search warrant on 3rd December 2002, another application came to be filed for the same relief, but it was rejected on 4th February 2003. It also appears from the copy of the orders annexed with the compilation that Criminal Misc. Application No.458 of 2002 was filed by mother of Jenabai, but thereafter Criminal Misc. Application No.505 of 2002 came to be filed by father of Jenabai. From the copy of the order passed in Criminal Revision Application No.7 of 2003, it appears that respondent No.1 challenged the order passed by the trial Court. However, the applicant was not joined as party in the Revision Application and the learned Additional Sessions Judge passed the impugned order without affording opportunity of hearing to the affected party, i.e. the opponents of Criminal Misc. Application No.505 of 2002. Therefore, the learned Additional Sessions Judge has committed error in passing the impugned order. Hence, the impugned order is erroneous, perverse and is required to be set aside.

In the result, the Revision Application is allowed. The order dated 10th April 2003 passed by the learned Additional Sessions Judge, Gandhidham-Kutch, in Criminal Revision Application No.7 of 2003 is set aside. Rule is made absolute accordingly.

***[Bankim N. Mehta, J.]***

***Rajendra***